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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,636	03/12/2007	Christer Sinderby	BRKP:021US	5708
33425 7590 05/17/2010 FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701				
EXAMINER				
BLIZZARD, CHRISTOPHER JAMES				
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3771				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/576,636

Applicant(s)

SINDERBY ET AL.

Examiner

CHRISTOPHER BLIZZARD

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/12/10.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30, 32-34, 36-38, 40, 41 and 43-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30, 32-34, 36-38, 40, 41, 43-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This office action is in response to amendment filed 3/12/10. As directed claims 1-2, 4-7, 11-13, 23-26, 28-30, 32-34, 36-38, 40, 41, and 43-46 were amended, claims 31, 35, 39 and 42 were cancelled and no claims were added. There for this application has claims 1-30, 32-34, 36-38, 40, 41, and 43-50 currently pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-17, 23-30, 32-34, 36-38, 40, 41, and 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett (2,648,331) in view of Sinderby (5,820,560).

4. Regarding claims 1, 2, 4, 5 and 13, Bennett discloses a method of delivering a combined positive and negative pressure assistance ventilation to a patient comprising: applying a positive pressure to the patient's airway to inflate the patients lungs (column 1, lines 48-51), applying negative pressure around the patient's ribcage or abdomen in order to reduce a load imposed on the patient's lungs (column 1, lines 48-51); and controlling synchronized application of the positive and negative pressure (column 1, lines 48-51). Bennett does not disclose the controlling of the device in response to detected neural inspiratory activation. Sinderby teaches a method of controlling a lung ventilator by detecting neural inspiratory activation of the patient and applying positive

pressure as a function of the signal (column 1, lines 18-24). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the method of Bennett with the step of detecting neural inspiratory activation and to control the ventilation of the patient based on the signal as taught by Sinderby in order to provide the advantage of more precise control of the patient's breathing.

5. Regarding claim 3, the combination of Bennett and Sinderby teach the claimed invention wherein Bennett teaches the method further comprising adjusting the level of positive and negative pressure to avoid application of excessive positive pressure (column 2, lines 23-35).

6. Regarding claim 11, the combination of Bennett and Sinderby teach the claimed invention wherein Bennett teaches the method further comprising applying a constant negative pressure around the patient's ribcage or abdomen during inspiration (column 1, lines 18-23).

7. Regarding claim 12, the combination of Bennett and Sinderby teach the claimed invention wherein Bennett teaches the method further comprising synchronizing the triggering and termination of the application of negative pressure with the triggering and termination of positive pressure (column 1, lines 48-51).

8. Regarding claims 23, 25, 28, 30, 33, 34 and 41, Bennett discloses a system for delivering a combined positive and negative pressure assistance ventilation to a patient comprising; a positive pressure ventilator (51) connected to the patient's airways for applying positive pressure to the lungs (fig. 1); A negative pressure ventilator installed on the patient's ribcage and abdomen for applying negative pressure (fig. 1); and a

controller (52) for controlling synchronization of the pressure applied by the two ventilators (column 5, lines 1-8). Bennett does not disclose the controller connected to a sensor for detecting neural inspiratory activation of a patient and wherein the controller controls the system in response to the sensor. Sinderby teaches a system for ventilating a patient comprising lung ventilator with a controller that has a sensor for detecting neural inspiratory activation of the patient and that applies pressure as a function of the signal (column 1, lines 18-24). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Bennett to include a controller with a neural inspiratory activation sensor as taught by Sinderby in order to provide the advantage of more precise control of the patient's breathing.

9. Regarding claim 24, the combination of Bennett and Sinderby teach the claimed invention wherein Bennett teaches the controller synchronizing the positive and negative pressure ventilators (column 1, lines 48-51).

10. Regarding claim 27, the combination of Bennett and Sinderby teach the claimed invention wherein Bennett teaches the controller applying a constant negative pressure around the patient's ribcage or abdomen during inspiration (column 1, lines 18-23).

11. Regarding claim 32, the combination of Bennett and Sinderby teach the claimed invention wherein Bennett teaches a means for adjusting the level of positive and negative pressure to avoid application of excessive positive pressure (column 2, lines 23-35).

12. Regarding claim 40, the combination of Bennett and Sinderby teach the claimed invention wherein Bennett teaches the system with wherein the controller synchronizes

triggering and termination of the application of negative pressure with the triggering and termination of positive pressure (column 1, lines 48-51).

13. Regarding claim 6-10, 26, and 36-38, the combination of Bennett and Sinderby teach the claimed invention wherein Sinderby teaches using a comparator for comparing the detected neural inspiratory activation with a target level and adjusting the applied pressure levels accordingly (column 2, lines 60-67; column 3, lines 1-5).

14. Regarding claims 14-17, 29, and 43-45, the combination of Bennett and Sinderby discloses the claimed invention wherein Sinderby teaches using a comparator for comparing the detected diaphragm movement, analogous to abdominal pressure swing, with a target level and adjusting the applied pressure level accordingly (column 2, lines 60-67; column 3, lines 1-5).

15. Claims 18-22 and 46-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett (2,648,331) and Sinderby (5,820,560) as applied to claims 1, 23 and 30 above, and further in view of Lindley (4,481,938).

16. Regarding claims 18-22 and 46-50, the combination of Bennett and Sinderby discloses the claimed invention except for applying a constant negative end expiratory pressure over the abdomen to adjust an end expiratory lung volume. Lindley teaches a device with a method of use for delivering combined positive and negative pressure assistance ventilation to a patient comprising the step of applying a positive end expiratory pressure into the lungs (column 7, lines 1-12), analogous negative end expiratory pressure over the abdomen. It would have been obvious to one of ordinary skill in the art at the time of the invention provide the system and method of Bennett and

Sinderby with negative end expiratory pressure over the abdomen as taught by Lindley in order to provide the advantage of treating patient's with respiratory distress syndrome.

Response to Arguments

17. Applicant's arguments with respect to claims 1-30, 32-34, 36-38, 40, 41, and 43-50 have been considered but are moot in view of the new ground(s) of rejection. Applicant's argument that combination of Bennett and Sinderby fail to teach that the control of positive and negative pressures is based on a neural inspiratory signal is not persuasive because Bennett teaches the synchronization of applying positive and negative pressures and Sinderby teaches the use of neural inspiratory signals to control the application of positive pressure, therefore the combination of Bennett and Sinderby teach the control of both the applied positive and negative pressures being based on neural inspiratory signals since the application of both is synchronized.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday thru Friday, 9:00AM -5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)2724835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTOPHER BLIZZARD/
Examiner, Art Unit 3771

/Steven O. Douglas/
Primary Examiner, Art Unit 3771